Supreme Court, U.S.
FILED

961930 JUN 3 1997

No.
OFFICE OF THE CLERK

(1)

IN THE

UNITED STATES SUPREME COURT
OCTOBER TERM, 1996

CLARK GAREN,

Petitioner,

vs.

SUPREME COURT OF WASHINGTON,
WASHINGTON STATE BAR ASSOCIATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI

LAW OFFICES OF CLARK GAREN
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74 pp

QUESTIONS PRESENTED

(1) Is this Court going to continue to permit the States to violate the Fourteenth Amendment rights of Bar Applicants by allowing them to use morality to exclude people whose personality they dislike?

(2) Does the broad and vague requirement of "Good Moral Character" violate the Fourteenth Amendment when it results in denial of a professional license for conduct having no rational connection to the profession and not constituting either a felony, a serious misdemeanor, or even a criminal act?

(3) Must a State use the same standards to evaluate the moral character of all applicants?

(4) May a State use an admission procedure that violates procedural due process under the Fourteenth Amendment by:

a. Conducting a hearing without giving Petitioner advance notice of the matters of inquiry?

b. Delegating total responsibility for admissions from the Supreme Court to the State Bar?

c. Conducting admission proceedings in secret with no public record, no explanation, and no accountability for the decisions?

(5) Does it violate the Due Process or Equal Protection Clause of the Fourteenth Amendment to deny admission to an attorney licensed in other states for 25 years who has no discipline record without a factual finding he committed an immoral act?

PARTIES

Your Petitioner is CLARK GAREN, Attorney at Law, appearing in pro per, who is admitted to practice law before these Courts:

1. United States Supreme Court;
2. Ninth Circuit Federal Court of Appeals;
3. United States Tax Court;
4. Federal District Court for the Northern District of California;
5. Federal District Court for the Eastern District of California;
6. Federal District Court for the Central District of California;
7. Federal District Court for the Southern District of California;
8. Federal District Court for the District of Arizona;
9. Federal District Court for the Southern District of Texas;
10. Supreme Court of California;
11. Supreme Court of Texas.

The Respondents are the Supreme Court of Washington and the Washington State Bar Association.

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1. OPINIONS BELOW

The Order Denying Petition For Review was entered on March 6, 1997 by the Supreme Court of Washington herein sought to be reviewed is unreported and printed in Appendix A.

2. JURISDICTION

The judgment of the Supreme Court of Washington was entered on March 6, 1997. The jurisdiction of this Court is involved pursuant to 28 U.S.C. 1254(1).

3. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the first section of the Fourteenth Amendment to the Constitution of the United States, which provides as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

UNITED STATES CONSTITUTION.
FOURTEENTH AMENDMENT

4. STATEMENT OF THE CASE

A. JURISDICTIONAL STATEMENT [S.C.R. 14(g)(i)]

Your Petitioner raised each "Question Presented" involving Federal issues before the Supreme Court of Washington. The Supreme Court of Washington ruled against Petitioner on each "Question Presented" in its Order Denying Petition (Appendix A).

B. CONCISE FACTUAL STATEMENT

Petitioner graduated in 1971 from the University of West Los Angeles, School of Law. Your Petitioner was admitted in California on January 5, 1972 and in Texas on October 4, 1985. Your Petitioner also has held a California Provisional Elementary School Teaching Credential and a California Collection Agency Qualified Manager License.

No regulatory body has ever brought any action for discipline or imposed discipline on your Petitioner for any reason. Furthermore, no Court, tribunal or regulatory body has ever made a factual finding in an explicit and objective fashion that your Petitioner has ever committed an immoral act.

In 1992, your Petitioner entered the Master of Law (Taxation) program at Golden Gate University. Your Petitioner completed the program and received a Master of Laws (Taxation) degree in January, 1993.

On October 5, 1995, the Nevada Supreme Court denied your Petitioner admission to practice law on grounds of poor moral character. On February 20, 1996, this Court refused to review that decision (United States Supreme Court Case Number 95-987).

After this Court refused to review the decision of the Nevada Supreme Court, the Supreme Court of Washington also refused to admit Petitioner.

5. REASONS FOR GRANTING THE WRIT

A. IS THIS COURT GOING TO CONTINUE TO PERMIT THE STATES TO VIOLATE THE FOURTEENTH AMENDMENT RIGHTS OF BAR APPLICANTS BY ALLOWING THE STATES TO USE MORALITY TO EXCLUDE PEOPLE WHOSE PERSONALITY THEY DISLIKE?

By refusing to review attorney admission cases, this Court has given the States a clear signal that they can exclude applicants in violation of the Due Process and Equal Protection Causes of the Fourteenth Amendment with impunity.

This Court refuses to interfere with state qualifications for professional licenses, which gives the States a free license to discriminate and freely violate the rights of applicants. The States now do so in private, in secret, and with impunity. States are now denying professional licenses to applicants just because the members in power personally dislike the applicants.

B. DOES IT VIOLATE THE DUE PROCESS OR EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO DENY ADMISSION TO AN ATTORNEY LICENSED IN OTHER STATES FOR 25 YEARS WITH NO DISCIPLINE RECORD WITHOUT A FACTUAL FINDING HE COMMITTED AN IMMORAL ACT

This Petition will not address the factual issues establishing the violation of Petitioner's rights by the Supreme Court of Washington. The Dissent to Denial of Application to Practice Law filed by Justices Sanders and Madsen (Appendix B) establishes the violation of Petitioner's 14th Amendment rights in a far more objective and eloquent manner than could your Petitioner.

For example, on page 4 of Appendix B, Justice Sanders noted that the Bar and the majority of the Court "failed to factually find in an explicit and objective fashion that Mr. Garen had ever committed an immoral act." Notwithstanding, the majority refused to admit your Petitioner without even holding a hearing, analyzing the charges, or even explaining their action.

C. MUST A STATE USE THE SAME STANDARD TO EVALUATE THE MORAL CHARACTER OF ALL APPLICANTS

On pages 17-18 of Appendix B, Justice Sanders examined the last seven initial applicants for admission to practice law in Washington. Justice Sanders noted that the Supreme Court of Washington had just admitted applicants who:

1. "sold seven ounces each of cocaine and heron (Bar Applicant No. 60);

2. conspired to import and distribute marijuana and transported $250,000 to another country (Bar Applicant No. 59);

3. engaged in vehicle tampering and shoplifting (Bar Applicant No. 58);

4. sold over a pound of cocaine to undercover officers for $30,500 in addition to possessing over a half-a-pound of cocaine (Bar Applicant No. 57);

5. furnished alcohol to a minor, delivered a controlled substance to a minor, and committed third degree sodomy with a 14-year-old girl (Bar Applicant No. 56);

6. broke into a liquor store, burglarized home, stole payroll checks, and drove under the influence (Bar Applicant No. 55);

7. possessed marijuana and attempted to commit fraud (Bar Applicant No. 54).

Justice Sanders then challenged the majority as follows:

> "It is our charge to measure Mr. Garen's application by the standard we have applied to others. I would be most interested to hear any explanation from the majority as to how Mr. Garen has fallen below that standard we have set in prior proceedings enumerated above. *Cum tacent, clamant.*"

The dissenting opinion thoroughly and objectively dismisses each and every reason given by the Washington Bar Association and the State Bar of Nevada to deny your Petitioner admission to the practice of law. The comparison of the charges against your Petitioner as carefully and fully analyzed by Justice Sanders in his dissent attached hereto as Exhibit B to the conduct of the last seven questionable applicants admitted to the practice of law in Washington prove conclusively and irrefutably that the 14th Amendment rights of your Petitioner to equal protection under the law were violated by the Washington Supreme Court because they did not evaluate him by the same standards they used to evaluate the last seven other applicants.

D. DOES THE BROAD AND VAGUE REQUIREMENT OF "GOOD MORAL CHARACTER" VIOLATE THE FOURTEENTH AMENDMENT WHEN IT RESULTS IN DENIAL OF A PROFESSIONAL LICENSE FOR CONDUCT HAVING NO RATIONAL CONNECTION TO THE PROFESSION AND NOT CONSTITUTING EITHER A FELONY, A SERIOUS MISDEMEANOR, OR A CRIMINAL ACT

This Court rejected a prior challenge to the broad and vague requirement that Bar applicants possess "Good Moral Character" because no state had used it to adapt or to fit personal views and predilections, or turned the language into a dangerous instrument for the arbitrary and discriminatory denial of the right to practice law. This Court reasoned:

> "The few reported cases in which bar admission has been denied on character grounds in New York all appear to have involved instances of misconduct **clearly inconsistent** with the standards of a lawyers calling."
>
> Law Students Civil Rights Research Council, Inc. vs. Wadmond, (1971) 91 S.Ct. 720, 725, 401 U.S. 154, 160, 27 L.Ed. 2d. 749, 756

TODAY, THIS IS NOT TRUE!

This Court used to protect the rights of the individual by prohibiting states from excluding a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment. While states can require high standards of qualification, such as good moral character, this Court used to require that **any qualification must have a rational connection with the applicant's fitness or capacity to practice law.** This Court used to refuse to permit a state to exclude an applicant when there is no basis for their finding that he fails to meet these standards, or when their action is invidiously discriminatory.

This Court has now given a clear signal to the states that it no longer cares! This Court has signaled the states that they can exclude applicants for any reason they want to with impunity and in secret, secure in the knowledge that this Court does not care and that this Court will never interfere!

This Court refused to review the decision of the Nevada Supreme Court denying admission to Petitioner (U. S. Supreme Court Case Number 95-987). The Supreme Court of Washington has now interpreted this refusal as a free license to continue to violate the constitutional rights of Petitioner with impunity. Both the Nevada decision (which this Court can no longer correct) and the Washington decision (which this Court still has jurisdiction to correct) conflict with every decision of both this Court and every other state court of last resort on this important Federal Question.

As a Judicial Act, this Judgment can only be appealed to this Court. If this Court refuses Certiorari, your Petitioner has no other remedy!

The term "Good Moral Character" is vague, easily adapted to fit personal views and predilections, and a dangerous instrument for arbitrary and discriminatory denial of the right to practice law. This Court, as the Court of last resort, had an obligation under the United States Constitution to review every denial of admission on character grounds that **did not involve** instances of misconduct **clearly inconsistent** with the standards of a lawyers calling. Since this Court no longer is willing to undertake this responsibility on a case by case basis, the ability of the states to exclude applications for lack of good moral character now violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

"The term "good moral character" has long been used as a qualification for membership in the Bar and has served a useful purpose in this respect. However the term, in itself, is unusually ambiguous. It can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer. Such a vague disqualification, which is easily adapted to fit personal views and predilections, **can be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law**."

We recognize the importance of leaving States free to select their own bars, but it is equally important that the **State not exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association**. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is **also** important to society that lawyers be unintimidated - free to think, speak, and act as members of an Independent Bar."

Konigsberg vs. State Bar of California, (1957) 77 S. Ct. 722, 733-734, 353 U. S. 252, 274-275, 1 L. Ed. 2d 810, 825

The ability to exclude a bar applicant for lack of good moral character without a factual finding in an explicit and objective fashion that the applicant committed an immoral act violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment. This Court must now impose the additional requirement that a State may not reject an applicant for a professional license on grounds of poor moral character unless it makes a factual finding in an explicit and objective fashion of conduct by the applicant that would constitute either a felony, a serious misdemeanor, or a criminal act.

E. MAY A STATE USE AN ADMISSION PROCEDURE THAT VIOLATES PROCEDURAL DUE PROCESS UNDER THE FOURTEENTH AMENDMENT BY:

1. CONDUCTING A HEARING WITHOUT GIVING PETITIONER ADVANCE NOTICE OF THE MATTERS OF INQUIRY?

2. THE SUPREME COURT DELEGATING TOTAL RESPONSIBILITY FOR ADMISSIONS TO THE STATE BAR OF WASHINGTON?

3. CONDUCTING ADMISSION PROCEEDINGS IN SECRET WITH NO PUBLIC RECORD, EXPLANATION, OR ACCOUNTABILITY

The procedural due process requirements in Bar admission cases are:

"We are not here concerned with grounds which justify denial of a license to practice law but only with what procedural due process requires if the license is to be withheld. This is the problem which Chief Justice Taft averted to in Goldsmith vs. United States Board of Tax Appeals, 170 U.S. 117, 46 S. Ct. 215, 70 L. Ed. 494, involving an application of a certified public account to practice before the Board of Tax Appeals. Chief Justice Taft writing for the Court said:

"We think that the petitioner having shown by his application that being a citizen of the United States and a certified public account under the laws of a state, he was within the class of those entitled to be admitted to practice under the board's rules, he should not have been rejected upon charges of his unfitness without giving him an opportunity by notice for hearing and answer. The rules adopted by the board provide that 'the board may in its discretion deny admission, suspend or disbar any person.' But this must the construed to mean the exercise of a discretion to be exercised after fair investigation, with such a notice, hearing, and opportunity to answer for the applicant as would constitute due process." Id., p. 123, 46 S. Ct. p. 217"

We have emphasized in recent years that procedural due process often requires confrontation and cross-examination of those whose word

deprives a person of his livelihood. (citation omitted.) That view has been taken by several state courts when it comes to procedural due process and the admission to practice law. (citations omitted.)

This result is sought to be avoided in several ways. First, it is said that the Committee's action is merely advisory, that it is an investigator and not a trier of facts, since under Rule 90 of the Judiciary Law it is the Appellate Division that ultimately must be convinced of the applicant's good character. The answer is that "[u]nless otherwise ordered by the Appellate Division" (New York Rules of Civil Practice, Rule 1(d), a favorable certificate from the Committee is a requisite to admission by the Appellate Division; and where, as here, **the Appellate Division has held no hearings of its own to determine an applicant's character, the role of the Committee is more than that of a mere investigator.**

Third, it is said that the record shows that Petitioner was not rejected on the basis of *ex parte* statements but on the basis of his own statements to the Committee. If the Court of Appeals reached this conclusion, the only constitutional question which was presented and which it could have "necessarily" passed on was whether petitioner was denied due process by not being informed of and allowed to rebut the

bases for either the Committee's or the Appellate Division's failure to find his good character. **It does not appear from the record that either the Committee or the Appellate Division, at any stage of these proceedings, ever apprised petitioner of its reasons for failing to be convinced of his good character.** Petitioner was clearly entitled to notice of and a hearing on the **grounds for his rejection** either before the Committee or before the Appellate Division. (Citations omitted.) There seems no question but that petitioner was apprised of the matters the Committee was considering.

"But a 'full hearing' - a fair and open hearing - requires more than that. * * * Those who are brought into contest with * * * Government in a quasi judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be hearing upon its proposals **before it issues its final command**. (Morgan v. United States, 304 U.S. 1, 18-19, 58 S. Ct. 773, 776, 82 L. Ed. 1129.

Petitioner had no opportunity to ascertain and contest the bases of the Committee's reports to the Appellate Division, and the Appellate Division gave him no separate hearing. Yet, "[t]he requirements of fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding parts of

> the procedure as well as to the beginning and intermediate steps. (citations omitted.)
>
> Willner vs. Committee on Character and Fitness, (1963), 373, U.S. 96, 105-106, 83 S. Ct. 1175, 1181, 10 L. Ed. 2d. 224, 230-231

The Washington State Bar violated the procedure established by this Court by questioning your Petitioner about numerous issues without notice. Instead of asserting his due process rights, your Petitioner fully answered all questions raised. The Supreme Court of Washington then not only refused to give your Petitioner a review or a hearing, they even refused to explain why Petitioner was being denied admission, and instead abdicated their responsibility to the Washington State Bar.

Justice Sanders describes the findings of the State Bar of Washington on page 13 of Appendix B as follows:

> "A review of the Bar's findings, however, evidences none are truly findings of any misconduct whatsoever on the part of Mr. Garen. To the extent they are findings of anything, they are findings of the subjective attitude of committee members which testify to the members' own feelings or doubts. But the committee's comfort level should not be Mr. Garen's problem. Nor should it be his problem that the committee has "doubts", as doubts can arise from a variety of sources including the listener's inattention or lack of understanding."

Justice Sanders goes on to note, on page 13 of Appendix B, that, "I find not a single objective finding that Mr. Garen has engaged in any activity, much less a pervasive pattern of activity, inconsistent with good moral character."

The Supreme Court of Washington has denied your Petitioner procedural due process in violation of the Fifth and Fourteenth Amendments by delegating its obligation to evaluate applicants to the Washington Bar Association, and then refusing to review or even explain the reasons for its decision.

6. ARGUMENT

Your Petitioner demonstrated he is of good moral character.

The State of Washington denied admission because they didn't like his personality; **not because he failed to demonstrate good moral character!**

This opinion is shared by Justices Sanders and Madsen of the Supreme Court of Washington who made the following observation on page 37 of Appendix B:

> "Oscar Wilde once said, "Morality is simply the attitude we adopt toward people whom we personally dislike. Given there was no real evidence of bad moral character on Mr. Garen's part, perhaps this explains why the committee did not recommend that Mr. Garen be admitted. **I can find no other.**"

The observation of Justices Sanders and Madsen are proved by the refusal of the majority to even **hear** this matter or explain their decision. Instead, they delegated the **final judgment** on the admission of your Petitioner to practice law to other members of the Washington State Bar, which consists of Petitoner's future competitors. The majority is silent because they **cannot** defend their action!

While the policy is to leave the States free to select their own bars, this Court cannot permit a **State to exercise this power in an arbitrary or discriminatory manner nor in such a way as to impinge on the freedom of political expression or association**. A bar composed of lawyers of good character is a worthy objective but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is **also** important to society that lawyers be unintimidated - free to think, speak, and act as members of an Independent Bar.

There is **no** evidence in the record which rationally justifies the finding your Petitioner failed to establish his good moral character. Without some authentic reliable evidence of unlawful or immoral actions reflecting adversely upon him, there is no adequate basis to conclude your Petitioner is disloyal or a person of bad character. **A lifetime of good citizenship is worth very little if it is so frail that it cannot withstand the suspicions which apparently were the basis for the action of the Supreme Court of Washington.**

This Court must grant this Petition for Writ of Certiorari to prevent abuse of the term "good moral character" as a qualification for bar members. This Court has noted the language, "Good Moral Character" is unusually ambiguous and can be defined in an almost unlimited number of ways for any definition will necessarily reflect the attitudes, experiences, and prejudices of the definer and is such a vague disqualification that it can easily be adapted to fit personal views and predilections, and be a dangerous instrument for arbitrary and discriminatory denial of the right to practice law.

Since the states are now using morality as a tool to exclude people they dislike, this Court must now impose the additional requirement upon the States that they cannot deny admission to law applicants on the basis of poor moral character without an explicit and objective finding that the applicant committed an immoral act consisting of conduct that would constitute either a felony, a serious misdemeanor, or a criminal act.

Throughout history, the moral fitness requirement has functioned primarily as a cultural showpiece. In that role, it has excommunicated a diverse and changing community, variously defined to include not only former felons, but women, minorities, adulterers, radicals, and bankrupts... In the absence of meaningful standards or professional consensus, the filtering process has proved inconsistent, idiosyncratic and needlessly intrusive. We have developed neither a coherent concept of professional character nor effective procedures to predict it. Rather, we have maintained a licensing ritual that too often has debased the ideas it seeks to sustain.

7. CONCLUSION

Your Petitioner has been excluded from the practice of law in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Your Petitioner has been excluded from the practice of law because the statutory scheme to qualify for admission in Washington contravenes the Due Process or Equal Protection Clause of the Fourteenth Amendment.

Your Petitioner prays that this Court find that the State of Washington has deprived your Petitioner of due process in denying him admission to the Washington State Bar.

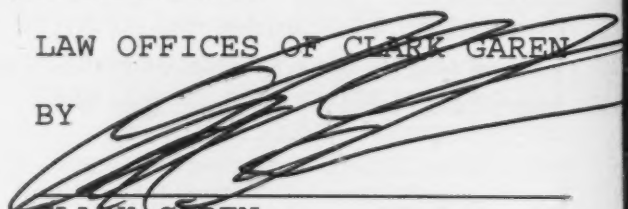
Your Petitioner further prays that this Court reverse the judgment of the Supreme Court of Washington and order that the Supreme Court of Washington admit your Petitioner to the practice of law in Washington.

Finally, your Petitioner prays that this Court now impose the additional requirement upon the States that they not exclude applicants from professions because of poor moral character unless there is an explicit and objective finding that the applicant committed an act that would constitute either a felony, a serious misdemeanor, or a criminal act.

Dated: 05/31/97

LAW OFFICES OF CLARK GAREN

BY



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APPENDIX "A"

BEST AVAILABLE COPY

THE SUPREME COURT OF WASHINGTON

IN RE:	
	B.A. NUMBER 61
CLARK GAREN,	
	ORDER DENYING PETITION
BAR APPLICANT.	FOR REVIEW

FILED
MARCH 6, 1997

C.J. MERRITT,
CLERK OF THE SUPREME COURT

Clark Garen, Bar applicant, filed a Petition for Review of Denial of His Application to Practice Law by the Board of Governors of the Washington State Bar Association and a Request for Publication of Decision on the Petition. The WSBA filed a Response to the Petition and Request for Publication. The matter was considered by the Court without oral argument on January 9, 1997, at the En Banc Conference. Now, therefore, it is hereby

ORDERED:

The Petition for Review of Denial of Clark Garen's Application to Practice Law by the Board of Governors of the Washington State Bar Association is denied. Clark Garen's Request for Publication of the Decision is denied.

DATED at Olympia, Washington the 6th day of March, 1997.

/s/ DURHAM, C.J.
CHIEF JUSTICE

STATE OF WASHINGTON)
COUNTY OF THURSTON)SS.

I, C.J. Merritt, Clerk of the Supreme Court of the State of Washington, do hereby certify that this is a true and correct copy of the original on file in my office.

Dated this 6th day of March, 1997

By /s/ C.J. MERRITT (SEAL)